

SJ 31: LOCAL-OPTION TAX ANALYSIS

ISSUE 1: REVENUE ALLOCATION FOR LOCAL-OPTION TAX

At the April 20 meeting, the Economic Affairs Interim Committee (EAIC) heard testimony from the Montana Association of Counties regarding the tax allocation to municipalities as outlined in 16-12-310(3), MCA. Current language states:

"45% of the resulting tax revenue must be apportioned to municipalities on the basis of the ratio of the population of the city or town to the total county population."

For example, Lewis and Clark County has a population of 70,000 and has two municipalities: Helena and East Helena. Helena's population of 32,000 is 46% of the county population, and East Helena's population of 2,000 is 3% of the county population. The municipalities comprise 49% of the total county population (34,000/70,000).

ANALYSIS

Under the current law, the state retains 5% and distributes the remaining revenues to the county. The county keeps 50% and then is to distribute the remaining 45% to the municipalities within the county. However, the existing language provides that the distribution to the municipalities is based on the population of each city or town to the total county population. This leaves lawfully collected revenues undistributed and unusable, as that ratio will never equal 100% (except in the consolidated city-counties).

In order to distribute the full 45% to the municipalities, the distribution of the 45% should be based on the population of each municipality to the total municipal population within the county. Under this ratio, in Lewis and Clark County, instead of Helena and East Helena receiving 46% and 3% of the municipality allocation, respectively, Helena receives 94% (32,000/34,000) and East Helena receives 6% (2,000/34,000).

RECOMMENDATION

Amend 16-12-310, MCA, to correct the ratio used for distribution to municipalities:

16-12-310. Limit on local-option marijuana excise tax rate – goods subject to tax.

- (3) If a county imposes a local-option marijuana excise tax:
 - (a) 50% of the resulting tax revenue must be retained by the county;
 - (b) 45% of the resulting tax revenue must be apportioned to the municipalities on the basis of the ratio of the population of ~~the each~~ city or town to the ~~total~~ county population of municipalities within the county; and

(c) the remaining 5% of the resulting tax revenue must be retained by the department to defray costs associated with administering 16-12-309 through 16-12-312 and 16-12-317. The funds retained by the department under this subsection (3)(c) must be deposited into the marijuana state special revenue account established under 16-12-111.

COMMITTEE OPTIONS

Option A: Amend 16-12-310, MCA.

Option B: Leave as is.

ISSUE 2: DISCREPANCY IN NOTICE REQUIREMENTS FOR ELECTIONS

The EAIC received public comment regarding a discrepancy in notice requirements. Section 16-12-311, MCA, provides for election and notice procedures for local government excise tax:

16-12-311. Local government excise tax – election required – procedure – notice.

(5) (a) Before the local-option marijuana excise tax question is submitted to the electorate, the county shall provide notice of the goods subject to the local-option marijuana excise tax by a method described in 13-1-108.

(b) The notice must be given two times, with at least 6 days separating the notices. The first notice must be given not more than 45 days prior to the election, and the last notice must be given not less than 30 days prior to the election.

(6) Notice of the election must be given as provided in 13-1-108 and include the information listed in subsection (3) of this section. (emphasis added)

The statute references 13-1-108, MCA, twice, which provides for notice requirements for political subdivision elections:

13-1-108. Notice of political subdivision elections. (1) Except as otherwise provided in this section, an election administrator conducting a political subdivision election shall give notice of the election at least three times no earlier than 40 days and no later than 10 days before the election. The notice must be published in a newspaper of general circulation in the jurisdiction where the election will be held or by broadcasting the notice on radio or television as provided in 2-3-105 through 2-3-107. The notice must be given using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection are fulfilled upon the third publication or broadcast of the notice.

(2) If the newspaper of general circulation within a political subdivision is a weekly newspaper, the notice may be published only two times and the notice requirements are fulfilled upon the second publication of the notice. (emphasis added)

ANALYSIS

Comparing these two statutes shows the following conflicts:

Element	16-12-311	13-1-108
Number of notices	Two	Three
Separation of notices	6 days	
Time of first notice	≤ 45 days prior to election	≤ 40 days before election
Time of last notice	≥ 30 days prior to election	≥ 10 days before election

If the intent of 16-12-311, MCA, is to follow the notice requirements of 13-1-108, MCA, subsection (5) of 16-12-311, MCA, appears redundant and in conflict with the provisions of 16-12-311, MCA, and should be removed. If the intent of 16-12-311(5)(b), MCA, is to provide more stringent notice requirements (two notices in 15 days vs. three notices in 30 days), 16-12-311, MCA, can be amended as follows:

16-12-311. Local government excise tax – election required – procedure – notice.

~~(5) (a) Before the local option marijuana excise tax question is submitted to the electorate, the county shall provide notice of the goods subject to the local option marijuana excise tax by a method described in 13-1-108.~~

~~(b) The notice must be given two times, with at least 6 days separating the notices. The first notice must be given not more than 45 days prior to the election, and the last notice must be given not less than 30 days prior to the election.~~

(5) (a) Except as provided in subsection (5)(b), notice of the election must be given as provided in 13-1-108 and include the information listed in subsection (3) of this section.

(b) The notice must be given two times, with at least 6 days separating the notices. The first notice must be given not more than 45 days prior to the election, and the last notice must be given not less than 30 days prior to the election.

RECOMMENDATION

Amend 16-12-311, MCA, to remove or clarify conflicting language with 13-1-108, MCA.

COMMITTEE OPTIONS

Option A: Amend 16-12-311, MCA, to remove notice elements in conflict with 13-1-108, MCA.

Option B: Amend 16-12-311, MCA, to clarify exception to the notice elements in 13-1-108, MCA.

Option C: Leave as is.